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8 **IN THE UNITED STATES DISTRICT COURT FOR THE**

9 **NORTHERN DISTRICT OF CALIFORNIA**

TEH

10 **SAN FRANCISCO DIVISION**

11 **UNITED STATES OF AMERICA and
MARTHA LEVY, Revenue Officer,**

CV No. 08

0768

12 **Petitioners,**

} **PETITION FOR JUDICIAL
APPROVAL OF LEVY ON A
PRINCIPAL RESIDENCE**

13 **v.**

14 **ALAN D. MILLER,**

15 **Respondent.**

16
 17 Now comes the United States of America, by and through its undersigned counsel, and
 18 alleges as follows:

19 **JURISDICTION AND VENUE**

20 1. This proceeding is commenced pursuant to 26 U.S.C. §§ 7401 and 7403, and seeks
 21 judicial approval to serve a levy on the principal residence of Alan D. Miller.
 22 2. This Court has jurisdiction over the action pursuant to 26 U.S.C. § 6334(e)(1)(B).
 23 3. Venue is proper in the Northern District of California pursuant to 28 U.S.C. §§
 24 1391(b) and 1396.

25 **ALLEGATIONS**

26 4. The property that is the subject of this suit is the principal residence of Alan D.
 27 Miller, and is located at 175 Essex Way, Pacifica, California. It is described in the records of the
 28 San Mateo County Recorded as follows (Levy Dec. Exh. 1):

FILED
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 RICHARD M WEEING
 CLERK U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

1 Lots 27 and 28, Block 8, as delineated upon that certain Map entitled, "MAP OF SAN
 2 PEDRO-TERRACE-BY-THE-SEA BEING PART OF SAN PEDRO RANCHO SAN
 3 MATEO COUNTY, CALIFORNIA", filed for record on February 3, 1908, in Book 5 of
 4 Maps at Page 60 in the Office of the Recorded of the County of San Mateo, California.

5. The Internal Revenue Service (IRS) has made assessments against Alan D. Miller for
 6 unpaid federal income taxes, penalties and interest as set forth below (Moore Dec. Exh. 1-6 and
 Levy Dec. ¶ 10):

TAX YEAR	TAX AMOUNT	DATE ASSESSED	UNPAID BALANCE	ACCRUED INTEREST & PENALTIES (AS OF 1/25/2008)	TOTAL BALANCE (AS OF 1/25/2008)
1989	\$26,419.00	8/5/2002	\$9,306.69	\$16,678.68	\$25,985.37
1990	\$34,326.00	8/5/2002	\$85,678.13	\$43,104.41	\$128,782.54
1991	\$19,553.00	8/5/2002	\$46,004.50	\$23,425.15	\$69,429.65
2003	\$11,854.00	4/19/2004	\$12,046.17	\$6,390.30	\$18,436.47
2004	\$14,922.00	11/21/2005	\$28,388.41	\$9,829.00	\$38,217.41
2005	\$8,096.00	11/20/2006	\$212.98	\$21.21	\$234.19

6. A Certificate of Assessments and Payments is presumptively correct evidence of a
 7 taxpayer's liability and satisfies the Government's burden of proof so that the United States may
 8 rest its case. United States v. Janis, 428 U.S. 433, 440-441 (1976); Anderson v. United States,
 9 561 F.2d 162, 165 (8th Cir. 1977). See also Welch v. Helvering, 290 U.S. 111 (1933); Foster v.
 10 Commissioner, 756 F.2d 1430, 1439 (9th Cir. 1985); Rockwell v. Commissioner, 512 F.2d
 11 882, 885 (9th Cir.), cert. denied, 423 U.S. 1015 (1975).

12 7. The IRS sent Alan D. Miller Notice of Intent to Levy and Notice of Right to a
 13 Hearing on the assessments described in paragraph 5. (Levy Dec. Exh. 2-8).

14 8. Pursuant to 26 U.S.C. §§ 6321 and 6322, liens arose in favor of the United States
 15 upon all property and rights to property, whether real or personal, belonging to Alan D. Miller, as
 16 of August 5, 2002, the date of the assessments described in paragraph 5.

17 9. The IRS filed a Notice of Federal Tax Lien against Alan D. Miller, which was
 18 recorded by the San Mateo County Recorder's Office on October 23, 2002, for the 1989, 1990,
 19 and 1991 tax years. (Levy Dec. Exh. 6).

10. The IRS filed a second Notice of Federal Tax Lien against Alan D. Miller, which was recorded by the San Mateo County Recorder's Office on July 8, 2005, for the 2003 tax year. (Levy Dec. Exh. 7).

11. The IRS filed a third Notice of Federal Tax Lien against Alan D. Miller, which was recorded by the San Mateo County Recorder's Office on January 13, 2006, for the 2004 tax year. (Levy Dec. Exh. 8).

12. The IRS filed a fourth Notice of Federal Tax Lien against Alan D. Miller, which was recorded by the San Mateo County Recorder's Office on December 12, 2006, for the 2005 tax year. (Levy Dec. Exh. 9).

13. Despite timely notice and demand for payment, Alan D. Miller has neglected or refused to pay the taxes described in paragraph 5. There remains due and owing on those assessments the sum of \$181,636.88, plus accrued interest and penalties of \$99,448.75 as provided by law. The total balance due as of January 25, 2008 is \$281,085.63. (Levy Dec. ¶ 10).

14. The IRS has attempted to satisfy Alan D. Miller's unpaid liability from assets other than the property described in paragraph 4, and no reasonable alternative exists to satisfy the unpaid tax liabilities described in paragraph 5.

15. Pursuant to 26 U.S.C. § 1334(e)(1), a District Court Judge or Magistrate must provide written approval before a levy can be served on the property described in paragraph 4.

WHEREFORE, the United States prays for the following relief:

A. That this Court enter the attached order permitting the IRS to serve a levy on the real property described in paragraph 4; and

B. That this Court grant such other and further relief as the Court deems proper or as justice may require.

Respectfully submitted,

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THOMAS MOORE
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Tax Division